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**REMARKS**

Applicant wishes to thank the Examiner for the detailed remarks. Claims 1, 4, and 5 are pending.

Claim 1 was rejected under 35 USC §102(b) as being anticipated by *Moses* (6,122,948). Applicant respectfully traverses this rejection. The Examiner provides a marked-up Figure 13 of *Moses* in the attempt to substantiate the Examiner's point that *Moses* discloses multi-wall sections. This is simply incorrect. *Moses* specifically states "preferably, the hollow front axle beam 70 has a substantially uniform wall thickness T and a substantially uniform outer diameter D throughout most of its entire length." [Col. 7, lines 14-17.] Thus, the Examiner's argument is in direct opposition to that which is preferred by *Moses*. Furthermore, *Moses* points to this uniformity of thickness throughout the specification as a desired goal. As previously discussed by Applicant, *Moses* utilizes a hydroforming process which cannot in any way change the wall thickness from the originating material nor be utilized with tubing of various wall thicknesses. [See Figures 5, 9, 12, and 15.] Furthermore, it is commonly understood that a hydroforming process is inherently limited to relatively thin wall materials typically 1/8" or less. The Examiner's interpretation of *Moses* cannot be sustained. Applicant respectfully requests reconsideration of this rejection.

Claims 4 and 5 were rejected under 35 USC §103(a) as being unpatentable over *Moses*. Applicant respectfully traverses this rejection. The Examiner admits that the *Moses* method fails to disclose that the forming step is swaging. The Examiner then takes official notice that swaging structural members to the desired cross section and/or wall thickness and/or length is an old and conventional technique commonly used throughout the art of metal forming. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the method of *Moses* so as to employ such an old and conventional technique, in light of the official notice taken in order to optimize the integrity of the structural member and thus increase the overall performance." MPEP §2144.03 states that "it would not be appropriate for the Examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being

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well known." As *Moses* only discloses hydroforming, and hydroforming must utilize a member with consistent and relatively thin wall thickness, swaging is inapplicable to such a process. The state of the art regarding swaging and hydroforming and the proper or improper sequence of these forming techniques is subject to the possibility of rational disagreement among those skilled in the art and is therefore not amenable to the taking of official notice. Furthermore, the Examiner suggests that swaging may be used to "optimize the integrity of the structural member." However, swaging is but one forming technique and does not inherently optimize integrity. As such, there is no motivation to combine hydroforming with swaging that would be supported simply by pointing to official notice. Again, *Moses* makes no mention of anything but hydroforming and is specifically directed thereto with all the inherent manufacturing limitations thereof. Under MPEP §2112, the Examiner is required to present evidence in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristics necessarily flows from the teachings of the prior art. Applicant requests that the Examiner provide such evidence to support the Examiner's conclusion or the rejection be dropped.

With regard to claim 5, the Examiner notes that the *Moses* method fails to include forming the hollow member into a generally polygonal cross section. Applicant recites in claim 5 the steps of swaging the hollow member into a generally polygonal cross-section after said step a. Thus, not only do Applicant's argument with regard to Claim 4 apply here, but the Examiner must now also meet the burden of showing that *Moses* suggests not only swaging, but also swaging into a generally polygonal cross-section through reliance upon official notice. The Examiner's rejection cannot be sustained. Notably, all of the cross-sections disclosed by *Moses* have relatively soft corners as would be expected by the use of a hydroforming process. The hydroforming process disclosed by *Moses* simply cannot suggest the limitations of claim 5 as swaging is the appropriate metal forming process for a polygonal cross section. In other words, Applicant is claiming a specific process to provide a specific cross-section of which neither is disclosed by the single *Moses* reference.

On top of all this, the Examiner further suggests that the order of the steps need not be formed in a particular order and that the order is a matter of design choice. This too cannot be

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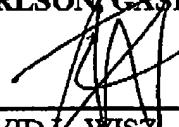
sustained. The Examiner is therefore relying still further on official notice to the point that the true delineated teachings of *Moses* have become unrecognizable. Official notice simply cannot be utilized as a cure all for such an admittedly deficient reference. Applicant again respectfully requests reconsideration.

Applicant believes that no additional fees are required; however, should any fees or extensions be required, the Commissioner is authorized to charge Deposit Account No. 50-1482, in the name of Carlson, Gaskey & Olds.

Applicant respectfully submits that this case is in condition for allowance. If the Examiner believes that a teleconference will facilitate moving this case forward to being issued, Applicant's representative can be contacted at the number indicated below.

Respectfully Submitted,

**CARLSON, GASKEY & OLDS, P.C.**

  
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